
SENATE BILL 5211

State of Washington

62nd Legislature

2011 Regular Session

By Senators Haugen, Swecker, Morton, Ranker, and Hargrove

Read first time 01/18/11. Referred to Committee on Natural Resources & Marine Waters.

1 AN ACT Relating to forest practices applications leading to
2 conversion of land for development purposes; and amending RCW
3 76.09.050, 76.09.240, and 43.21C.037.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read
6 as follows:

7 (1) The board shall establish by rule which forest practices shall
8 be included within each of the following classes:

9 Class I: Minimal or specific forest practices that have no direct
10 potential for damaging a public resource and that may be conducted
11 without submitting an application or a notification except that when
12 the regulating authority is transferred to a local governmental entity,
13 those Class I forest practices that involve timber harvesting or road
14 construction within "urban growth areas," designated pursuant to
15 chapter 36.70A RCW, are processed as Class IV forest practices, but are
16 not subject to environmental review under chapter 43.21C RCW;

17 Class II: Forest practices which have a less than ordinary
18 potential for damaging a public resource that may be conducted without
19 submitting an application and may begin five calendar days, or such

1 lesser time as the department may determine, after written notification
2 by the operator, in the manner, content, and form as prescribed by the
3 department, is received by the department. However, the work may not
4 begin until all forest practice fees required under RCW 76.09.065 have
5 been received by the department. Class II shall not include forest
6 practices:

7 ~~(a) On ((lands platted after January 1, 1960, as provided in~~
8 ~~chapter 58.17 RCW or on lands that have or are being converted to~~
9 ~~another use;~~

10 ~~(b)) forest lands that are being converted to another use;~~

11 (b) On forest lands located on lots, as the term "lot" is defined
12 in RCW 58.17.020, that are less than or equal to two and one-half
13 acres, unless a landowner:

14 (i) Owns adjacent lots, with common boundaries the length of which
15 are at least ten percent of the perimeter of the smaller of each two
16 lots with common boundaries, and with a combined total forest land
17 acreage of five acres or more from all of the lots; and

18 (ii) Provides to the department and the county, city, or town a
19 written statement of intent, signed by the forest landowner, not to
20 convert the forest land to a use other than growing commercial timber
21 for ten years;

22 (c) Which require approvals under the provisions of the hydraulics
23 act, RCW 77.55.021;

24 ~~((e))~~ (d) Within "shorelines of the state" as defined in RCW
25 90.58.030;

26 ~~((d))~~ (e) Excluded from Class II by the board; or

27 ~~((e))~~ (f) Including timber harvesting or road construction within
28 "urban growth areas," designated pursuant to chapter 36.70A RCW, which
29 are Class IV;

30 Class III: Forest practices other than those contained in Class I,
31 II, or IV. A Class III application must be approved or disapproved by
32 the department within thirty calendar days from the date the department
33 receives the application. However, the applicant may not begin work on
34 that forest practice until all forest practice fees required under RCW
35 76.09.065 have been received by the department;

36 Class IV: Forest practices other than those contained in Class I
37 or II:

1 (a) On (~~lands platted after January 1, 1960, as provided in~~
2 ~~chapter 58.17 RCW, (b) on lands that have or are being converted to~~
3 ~~another use,~~) forest lands that are being converted to another use;

4 (b) On forest lands located on lots, as the term "lot" is defined
5 in RCW 58.17.020, that are less than or equal to two and one-half
6 acres, unless a landowner:

7 (i) Owns adjacent lots, with common boundaries the length of which
8 are at least ten percent of the perimeter of the smaller of each two
9 lots with common boundaries, and with a combined total forest land
10 acreage of five acres or more from all of the lots; and

11 (ii) Provides to the department and the county a written statement
12 of intent, signed by the forest landowner, not to convert the forest
13 land to a use other than growing commercial timber for ten years;

14 (c) On lands which, pursuant to RCW 76.09.070 as now or hereafter
15 amended, are not to be reforested because of the likelihood of future
16 conversion to urban development((~~7~~));

17 (d) (~~involving~~) That involve timber harvesting or road
18 construction on forest lands that are contained within "urban growth
19 areas," designated pursuant to chapter 36.70A RCW, except where the
20 forest landowner provides:

21 (i) A written statement of intent signed by the forest landowner
22 not to convert to a use other than commercial forest product operations
23 for ten years, accompanied by either a written forest management plan
24 acceptable to the department or documentation that the land is enrolled
25 under the provisions of chapter 84.33 or 84.34 RCW; or

26 (ii) A conversion option harvest plan approved by the local
27 governmental entity and submitted to the department as part of the
28 application((~~7~~)); and/or

29 (e) Which have a potential for a substantial impact on the
30 environment and therefore require an evaluation by the department as to
31 whether or not a detailed statement must be prepared pursuant to the
32 state environmental policy act, chapter 43.21C RCW. Such evaluation
33 shall be made within ten days from the date the department receives the
34 application: PROVIDED, That nothing herein shall be construed to
35 prevent any local or regional governmental entity from determining that
36 a detailed statement must be prepared for an action pursuant to a Class
37 IV forest practice taken by that governmental entity concerning the
38 land on which forest practices will be conducted. A Class IV

1 application must be approved or disapproved by the department within
2 thirty calendar days from the date the department receives the
3 application, unless the department determines that a detailed statement
4 must be made, in which case the application must be approved or
5 disapproved by the department within sixty calendar days from the date
6 the department receives the application, unless the commissioner of
7 public lands, through the promulgation of a formal order, determines
8 that the process cannot be completed within such period. However, the
9 applicant may not begin work on that forest practice until all forest
10 practice fees required under RCW 76.09.065 have been received by the
11 department.

12 Forest practices under Classes I, II, and III are exempt from the
13 requirements for preparation of a detailed statement under the state
14 environmental policy act.

15 (2) Except for those forest practices being regulated by local
16 governmental entities as provided elsewhere in this chapter, no Class
17 II, Class III, or Class IV forest practice shall be commenced or
18 continued after January 1, 1975, unless the department has received a
19 notification with regard to a Class II forest practice or approved an
20 application with regard to a Class III or Class IV forest practice
21 containing all information required by RCW 76.09.060 as now or
22 hereafter amended. However, in the event forest practices regulations
23 necessary for the scheduled implementation of this chapter and RCW
24 90.48.420 have not been adopted in time to meet such schedules, the
25 department shall have the authority to regulate forest practices and
26 approve applications on such terms and conditions consistent with this
27 chapter and RCW 90.48.420 and the purposes and policies of RCW
28 76.09.010 until applicable forest practices regulations are in effect.

29 (3) Except for those forest practices being regulated by local
30 governmental entities as provided elsewhere in this chapter, if a
31 notification or application is delivered in person to the department by
32 the operator or the operator's agent, the department shall immediately
33 provide a dated receipt thereof. In all other cases, the department
34 shall immediately mail a dated receipt to the operator.

35 (4) Except for those forest practices being regulated by local
36 governmental entities as provided elsewhere in this chapter, forest
37 practices shall be conducted in accordance with the forest practices

1 regulations, orders and directives as authorized by this chapter or the
2 forest practices regulations, and the terms and conditions of any
3 approved applications.

4 (5) Except for those forest practices being regulated by local
5 governmental entities as provided elsewhere in this chapter, the
6 department of natural resources shall notify the applicant in writing
7 of either its approval of the application or its disapproval of the
8 application and the specific manner in which the application fails to
9 comply with the provisions of this section or with the forest practices
10 regulations. Except as provided otherwise in this section, if the
11 department fails to either approve or disapprove an application or any
12 portion thereof within the applicable time limit, the application shall
13 be deemed approved and the operation may be commenced: PROVIDED, That
14 this provision shall not apply to applications which are neither
15 approved nor disapproved pursuant to the provisions of subsection (7)
16 of this section: PROVIDED, FURTHER, That if seasonal field conditions
17 prevent the department from being able to properly evaluate the
18 application, the department may issue an approval conditional upon
19 further review within sixty days: PROVIDED, FURTHER, That the
20 department shall have until April 1, 1975, to approve or disapprove an
21 application involving forest practices allowed to continue to April 1,
22 1975, under the provisions of subsection (2) of this section. Upon
23 receipt of any notification or any satisfactorily completed application
24 the department shall in any event no later than two business days after
25 such receipt transmit a copy to the departments of ecology and fish and
26 wildlife, and to the county, city, or town in whose jurisdiction the
27 forest practice is to be commenced. Any comments by such agencies
28 shall be directed to the department of natural resources.

29 (6) For those forest practices regulated by the board and the
30 department, if the county, city, or town believes that an application
31 is inconsistent with this chapter, the forest practices regulations, or
32 any local authority consistent with RCW 76.09.240 as now or hereafter
33 amended, it may so notify the department and the applicant, specifying
34 its objections.

35 (7) For those forest practices regulated by the board and the
36 department, the department shall not approve portions of applications
37 to which a county, city, or town objects if:

1 (a) The department receives written notice from the county, city,
2 or town of such objections within fourteen business days from the time
3 of transmittal of the application to the county, city, or town, or one
4 day before the department acts on the application, whichever is later;
5 and

6 (b) The objections relate to (~~lands~~) either:

7 (~~(i) ((Platted after January 1, 1960, as provided in chapter 58.17~~
8 ~~RCW; or~~

9 ~~(ii) On))~~ Lands that ((have or)) are being converted to another
10 use; or

11 (ii) Forest lands located on lots, as the term "lot" is defined in
12 RCW 58.17.020, that are less than or equal to two and one-half acres,
13 unless a landowner:

14 (A) Owns adjacent lots, with common boundaries the length of which
15 are at least ten percent of the perimeter of the smaller of each two
16 lots with common boundaries, and with a combined total forest land
17 acreage of five acres or more from all of the lots; and

18 (B) Provides to the department and the county, city, or town a
19 written statement of intent, signed by the forest landowner, not to
20 convert the forest land to a use other than growing commercial timber
21 for ten years.

22 The department shall either disapprove those portions of such
23 application or appeal the county, city, or town objections to the
24 appeals board. If the objections related to (~~subparagraphs~~) (b)(i)
25 and (ii) of this subsection are based on local authority consistent
26 with RCW 76.09.240 as now or hereafter amended, the department shall
27 disapprove the application until such time as the county, city, or town
28 consents to its approval or such disapproval is reversed on appeal.
29 The applicant shall be a party to all department appeals of county,
30 city, or town objections. Unless the county, city, or town either
31 consents or has waived its rights under this subsection, the department
32 shall not approve portions of an application affecting such lands until
33 the minimum time for county, city, or town objections has expired.

34 (8) For those forest practices regulated by the board and the
35 department, in addition to any rights under the above paragraph, the
36 county, city, or town may appeal any department approval of an
37 application with respect to any lands within its jurisdiction. The

1 appeals board may suspend the department's approval in whole or in part
2 pending such appeal where there exists potential for immediate and
3 material damage to a public resource.

4 (9) For those forest practices regulated by the board and the
5 department, appeals under this section shall be made to the appeals
6 board in the manner and time provided in RCW 76.09.205. In such
7 appeals there shall be no presumption of correctness of either the
8 county, city, or town or the department position.

9 (10) For those forest practices regulated by the board and the
10 department, the department shall, within four business days notify the
11 county, city, or town of all notifications, approvals, and disapprovals
12 of an application affecting lands within the county, city, or town,
13 except to the extent the county, city, or town has waived its right to
14 such notice.

15 (11) For those forest practices regulated by the board and the
16 department, a county, city, or town may waive in whole or in part its
17 rights under this section, and may withdraw or modify any such waiver,
18 at any time by written notice to the department.

19 (12) Notwithstanding subsections (2) through (5) of this section,
20 forest practices applications or notifications are not required for
21 exotic insect and disease control operations conducted in accordance
22 with RCW 76.09.060(8) where eradication can reasonably be expected.

23 **Sec. 2.** RCW 76.09.240 and 2010 c 219 s 1 are each amended to read
24 as follows:

25 (1)(a) Counties planning under RCW 36.70A.040 with a population
26 greater than one hundred thousand, and the cities and towns within
27 those counties, where more than a total of twenty-five Class IV forest
28 practices applications, as defined in RCW 76.09.050(1) Class IV (a)
29 through (d), have been filed with the department between January 1,
30 2003, and December 31, 2005, shall adopt and enforce ordinances or
31 regulations as provided in subsection (2) of this section for the
32 following:

33 (i) Forest practices classified as Class I, II, III, and IV that
34 are within urban growth areas designated under RCW 36.70A.110, except
35 for forest practices on ownerships of contiguous forest land equal to
36 or greater than twenty acres where the forest landowner provides, to
37 the department and the county, city, or town, a written statement of

1 intent, signed by the forest landowner, not to convert to a use other
2 than growing commercial timber for ten years. This statement must be
3 accompanied by either:

4 (A) A written forest management plan acceptable to the department;
5 or

6 (B) Documentation that the land is enrolled as forest land of long-
7 term commercial significance under the provisions of chapter 84.33 RCW;
8 and

9 (ii) Forest practices classified as Class IV, outside urban growth
10 areas designated under RCW 36.70A.110, involving either timber harvest
11 or road construction, or both on:

12 (A) ~~((Lands platted after January 1, 1960, as provided in chapter
13 58.17 RCW;~~

14 ~~(B))~~ Forest lands that ~~((have or))~~ are being converted to another
15 use;

16 (B) Forest lands located on lots, as the term "lot" is defined in
17 RCW 58.17.020, that are less than or equal to two and one-half acres,
18 unless a landowner:

19 (I) Owns adjacent lots, with common boundaries the length of which
20 are at least ten percent of the perimeter of the smaller of each two
21 lots with common boundaries, and with a combined total forest land
22 acreage of five acres or more from all of the lots; and

23 (II) Provides to the department and the county, city, or town a
24 written statement of intent, signed by the forest landowner, not to
25 convert the forest land to a use other than growing commercial timber
26 for ten years; or

27 (C) Lands which, under RCW 76.09.070, are not to be reforested
28 because of the likelihood of future conversion to urban development;

29 (b) Counties planning under RCW 36.70A.040, and the cities and
30 towns within those counties, not included in (a) of this subsection,
31 may adopt and enforce ordinances or regulations as provided in (a) of
32 this subsection; and

33 (c) Counties not planning under RCW 36.70A.040, and the cities and
34 towns within those counties, may adopt and enforce ordinances or
35 regulations as provided in subsection (2) of this section for forest
36 practices classified as Class IV involving either timber harvest or
37 road construction, or both on:

1 (i) (~~Lands platted after January 1, 1960, as provided in chapter~~
2 ~~58.17 RCW;~~

3 ~~(ii))~~ Lands that (~~have or~~) are being converted to another use;

4 (ii) Forest lands located on lots, as the term "lot" is defined in
5 RCW 58.17.020, that are less than or equal to two and one-half acres,
6 unless a landowner:

7 (A) Owns adjacent lots, with common boundaries the length of which
8 are at least ten percent of the perimeter of the smaller of each two
9 lots with common boundaries, and with a combined total forest land
10 acreage of five acres or more from all of the lots; and

11 (B) Provides to the department and the county, city, or town a
12 written statement of intent, signed by the forest landowner, not to
13 convert the forest land to a use other than growing commercial timber
14 for ten years; or

15 (iii) Lands which, under RCW 76.09.070, are not to be reforested
16 because of the likelihood of future conversion to urban development.

17 (2) Before a county, city, or town may regulate forest practices
18 under subsection (1) of this section, it shall ensure that its critical
19 areas and development regulations are in compliance with RCW 36.70A.130
20 and, if applicable, RCW 36.70A.215. The county, city, or town shall
21 notify the department and the department of ecology in writing sixty
22 days prior to adoption of the development regulations required in this
23 section. The transfer of jurisdiction shall not occur until the
24 county, city, or town has notified the department, the department of
25 revenue, and the department of ecology in writing of the effective date
26 of the regulations. Ordinances and regulations adopted under
27 subsection (1) of this section and this subsection must be consistent
28 with or supplement development regulations that protect critical areas
29 pursuant to RCW 36.70A.060, and shall at a minimum include:

30 (a) Provisions that require appropriate approvals for all phases of
31 the conversion of forest lands, including land clearing and grading;
32 and

33 (b) Procedures for the collection and administration of permit and
34 recording fees.

35 (3) Activities regulated by counties, cities, or towns as provided
36 in subsections (1) and (2) of this section shall be administered and
37 enforced by those counties, cities, or towns. The department shall not
38 regulate these activities under this chapter.

1 (4) The board shall continue to adopt rules and the department
2 shall continue to administer and enforce those rules in each county,
3 city, or town for all forest practices as provided in this chapter
4 until such a time as the county, city, or town has updated its
5 development regulations as required by RCW 36.70A.130 and, if
6 applicable, RCW 36.70A.215, and has adopted ordinances or regulations
7 under subsections (1) and (2) of this section. However, counties,
8 cities, and towns that have adopted ordinances or regulations regarding
9 forest practices prior to ~~((July 22, 2007,))~~ the effective date of this
10 section are not required to readopt their ordinances or regulations in
11 order to satisfy the requirements of this section except as necessary
12 to ensure consistency with Class IV forest practices as defined in RCW
13 76.09.050.

14 (5) Upon request, the department shall provide technical assistance
15 to all counties, cities, and towns while they are in the process of
16 adopting the regulations required by this section, and after the
17 regulations become effective.

18 (6) For those forest practices over which the board and the
19 department maintain regulatory authority no county, city, municipality,
20 or other local or regional governmental entity shall adopt or enforce
21 any law, ordinance, or regulation pertaining to forest practices,
22 except that to the extent otherwise permitted by law, such entities may
23 exercise any:

24 (a) Land use planning or zoning authority: PROVIDED, That exercise
25 of such authority may regulate forest practices only: (i) Where the
26 application submitted under RCW 76.09.060 as now or hereafter amended
27 indicates that the lands ~~((have been or will be))~~ are being converted
28 to a use other than commercial forest product production; or (ii) on
29 ~~((lands which have been platted after January 1, 1960, as provided in~~
30 ~~chapter 58.17 RCW))~~ forest lands located on lots, as the term "lot" is
31 defined in RCW 58.17.020, that are less than or equal to two and one-
32 half acres, unless a landowner:

33 (A) Owns adjacent lots, with common boundaries the length of which
34 are at least ten percent of the perimeter of the smaller of each two
35 lots with common boundaries, and with a combined total forest land
36 acreage of five acres or more from all of the lots; and

37 (B) Provides to the department and the county, city, or town a
38 written statement of intent, signed by the forest landowner, not to

1 convert the forest land to a use other than growing commercial timber
2 for ten years: PROVIDED, That no permit system solely for forest
3 practices shall be allowed; that any additional or more stringent
4 regulations shall not be inconsistent with the forest practices
5 regulations enacted under this chapter; and such local regulations
6 shall not unreasonably prevent timber harvesting;

7 (b) Taxing powers;

8 (c) Regulatory authority with respect to public health; and

9 (d) Authority granted by chapter 90.58 RCW, the "Shoreline
10 Management Act of 1971."

11 (7) All counties and cities adopting or enforcing regulations or
12 ordinances under this section shall include in the regulation or
13 ordinance a requirement that a verification accompany every permit
14 issued for forest land by that county or city associated with the
15 conversion to a use other than commercial timber operation, as that
16 term is defined in RCW 76.09.020, that verifies that the land in
17 question is not or has not been subject to a notice of conversion to
18 nonforestry uses under RCW 76.09.060 during the six-year period prior
19 to the submission of a permit application.

20 (8) To improve the administration of the forest excise tax created
21 in chapter 84.33 RCW, a county, city, or town that regulates forest
22 practices under this section shall report permit information to the
23 department of revenue for all approved forest practices permits. The
24 permit information shall be reported to the department of revenue no
25 later than sixty days after the date the permit was approved and shall
26 be in a form and manner agreed to by the county, city, or town and the
27 department of revenue. Permit information includes the landowner's
28 legal name, address, telephone number, and parcel number.

29 **Sec. 3.** RCW 43.21C.037 and 1997 c 173 s 6 are each amended to read
30 as follows:

31 (1) Decisions pertaining to applications for Class I, II, and III
32 forest practices, as defined by rule of the forest practices board
33 under RCW 76.09.050, are not subject to the requirements of RCW
34 43.21C.030(2)(c) as now or hereafter amended.

35 (2) When the applicable county, city, or town requires a license in
36 connection with any proposal involving forest practices:

1 (a) ~~((on lands platted after January 1, 1960, as provided in~~
2 ~~chapter 58.17 RCW, (b))~~ On forest lands that ((have or)) are being
3 converted to another use((r)):

4 (b) On forest lands located on lots, as the term "lots" is defined
5 in RCW 58.17.020, that are less than or equal to two and one-half
6 acres, unless a landowner:

7 (i) Owns adjacent lots, with common boundaries the length of which
8 are at least ten percent of the perimeter of the smaller of each two
9 lots with common boundaries, and with a combined total forest land
10 acreage of five acres or more from all of the lots; and

11 (ii) Provides to the department and the county, city, or town a
12 written statement of intent, signed by the forest landowner, not to
13 convert the forest land to a use other than growing commercial timber
14 for ten years; or

15 (c) On lands which, pursuant to RCW 76.09.070 as now or hereafter
16 amended, are not to be reforested because of the likelihood of future
17 conversion to urban development, then the local government, rather than
18 the department of natural resources, is responsible for any detailed
19 statement required under RCW 43.21C.030(2)(c).

20 (3) Those forest practices determined by rule of the forest
21 practices board to have a potential for a substantial impact on the
22 environment, and thus to be Class IV practices, require an evaluation
23 by the department of natural resources as to whether or not a detailed
24 statement must be prepared pursuant to this chapter. The evaluation
25 shall be made within ten days from the date the department receives the
26 application. A Class IV forest practice application must be approved
27 or disapproved by the department within thirty calendar days from the
28 date the department receives the application, unless the department
29 determines that a detailed statement must be made, in which case the
30 application must be approved or disapproved by the department within
31 sixty days from the date the department receives the application,
32 unless the commissioner of public lands, through the promulgation of a
33 formal order, determines that the process cannot be completed within
34 such period. This section shall not be construed to prevent any local
35 or regional governmental entity from determining that a detailed
36 statement must be prepared for an action regarding a Class IV forest

1 practice taken by that governmental entity concerning the land on which
2 forest practices will be conducted.

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